

In response to Paragraph 14: Company specific do not call lists do not work. There are simply too many companies involved in telemarketing. I'm sure you can do the math. The fact that I have told over 50 companies over the last year to put me on their do not call lists does nothing to deter other companies who might want to call me, and there are millions of such companies out there. The burden is simply too great on the consumer. Our state (Pennsylvania), like many others, has recently enacted a state wide do not call list. But I pity those who live in states that have not enacted such legislation. The FCC should enact a national do not call list, as authorized by the TCPA. In addition, I receive at least one "predictive dialer" hang up each week where I cannot assert my "company specific do not call request", and I have also received several solicitations from real live people who have hung up on me before taking my do not call request simply because I began to question them about the company they were calling on behalf of.

In response to Paragraph 15: There is a legitimate business interest in predictive dialers, but there is no legitimate business or commercial speech interest promoted by abandoned predictive dialer calls. These calls concern me because I often think someone is trying to determine if I am home before attempting a burglary. I receive at least one predictive dialer hang up a week. I work at home, and thus must answer my phone each time it rings. If I am not at my desk I have to run up the stairs to get the phone, only to find "dead air". If I pick up the phone and receive a call, and that call is from a telemarketer, and I can't give my do not call request, then that is a violation of the TCPA. The FCC should make it clear that all abandoned calls placed by predictive dialers are in violation of the TCPA because the called party receives the call but is unable to leave a do not call request, and also because the caller does not provide the name of the party that initiated the call, and also because the caller does not provide an address or phone number of the party that initiated the call. The FCC should make it clear that this is true no matter whom the caller is, and that this applies to commercial solicitations, non-profit solicitations, commercial calls, political campaign calls, etcetera.

In response to paragraph 16: Any national do not call list must be funded by the commercial for-profit organizations that are forced to use it. This is how the state of Pennsylvania funds its statewide do not call list.

In response to paragraph 20: The "established business relationship" must apply to the business, and not to the product or service offered by the business. If the "established business relationship" applied to the product or service, then Sears could call me dozens of times and each time they could claim that they were calling to sell me a different product or service (insurance, house wares, automotive repair services, etcetera), and I would have to give the same company my do not call request over and over again. It would be confusing to the consumer who would believe that they had already given their do not call request to the company, and it would allow telemarketers to evade the law by offering several products or services each time they called and claiming that the last time they called they didn't offer one of the services that they offered the second time they called.

In response to paragraph 22: The FCC should clarify that ALL callers that utilize an "automatic telephone dialing system" must provide the name, and the telephone number or address of the party that initiated the call. (Since individuals do not use "automatic telephone dialing systems" this has no impact on individual callers and calls.) In addition, if possible, the FCC should ensure that callers cannot evade such requirements by providing fake telephone numbers or previously

disconnected telephone numbers. For instance, Ed Rendell (the Governor elect of the great state of Pennsylvania) used a predictive dialer to deliver a prerecorded message to my residential telephone. He did not leave an address or phone number in his message, and the *69 caller ID number that he provided was 555-555-5555. The FCC should make it clear that such calls are in violation of the TCPA, and they should require such callers to provide the correct name of the caller and their phone number via *69 caller ID. The FCC should also make it clear that such calls are subject to the immediate private right of action provided by 47 USC Section 227(b)(3). In another example, I received a prerecorded telephone solicitation. The prerecorded message did not provide a telephone number or address as required by the TCPA. The phone number of the calling party was successfully traced by *57 call trace. The results of the *57 call trace were obtained by subpoena only to find out that the number was disconnected a year before the call was placed. The FCC should make it clear that such tactics to evade identification are in violation of the TCPA's requirement that the calling party identify themselves.

In response to paragraphs 23: The FCC shouldn't need to identify specific technologies as automatic telephone dialing systems since the technologies change. The FCC should simply make it clear that an "automatic telephone dialing system" includes anything, in excess of the human mind and body, that is able to generate, store, or dial telephone numbers.

In response to paragraph 24: The FCC should make it clear that any piece of equipment, including predictive dialers, that dials telephone numbers stored in a database of telephone numbers is by definition an "automatic telephone dialing system". The FCC should allow telemarketers to use predictive dialers, but should make it clear that any time a call is placed by an automatic telephone dialing system, including predictive dialers, and the call is abandoned (hung up on) after the called party receives the call, then 3 sections of the TCPA have been violated (the caller did not take a do not call request, the caller did not provide a name, the caller did not provide an address or telephone number). The FCC should also make it clear that ALL such calls are ALWAYS in violation of the TCPA no matter who initiates the call, and that ALL such calls are ALWAYS subject to an immediate private right of action provided by 47 USC Section 227(b)(3) no matter who initiates the call. I received a predictive dialer hang up call while writing this paragraph (I'm serious, I'm not joking here). I dialed *69 caller ID, but the call was placed "out of the dialing area" and could not be identified. The FCC should require anyone who uses an automatic telephone dialing system to transmit a telephone number via *69 caller ID and *57 call trace that would identify them. (The language should prevent them from transmitting a disconnected telephone number, the telephone number of an innocent 3rd party, a totally fake telephone number like 999-999-9999, or the telephone number of a party that can claim not to be legally responsible for the telephone call.)

In response to paragraph 25: The FCC should make it clear that any time an automated telephone dialing system is used to call a number and that call is received by the called party (or by a fax or answering machine on their behalf), the caller must identify themselves (and take a do not call request if it's not a fax machine) before hanging up. The purpose of the call is irrelevant. It doesn't matter if it's a non-profit call to solicit, a commercial call, a political call, or a call to determine if the number is a fax machine.) Thus the practice of calling blocks of numbers and hanging up if the call is not received by a fax machine is in violation of the TCPA. Obviously sending an unsolicited fax is a violation of the TCPA. Similarly, hanging up when a fax machine or an answering machine

receives the call on behalf of the called party is a violation of the TCPA because a do not call request was not taken, and a name not given, and an address or phone number not given.

In response to paragraph 26: The FCC should make it clear that a predictive dialer, or any other equipment that dials telephone numbers using a computer database of numbers, falls under the TCPA's restrictions on the use of autodialers. The use of predictive dialers may be banned, but the problem is not their use per se, and it would be difficult to prove one was used. The problem has to do with the abandoned calls produced by predictive dialers. The FCC should make it clear that no level of abandoned calls is acceptable and that any and all abandoned calls violate 3 aspects of the TCPA (no do not call request is taken, the caller does not leave a name, the caller does not leave an address or telephone number). The FCC should make it clear that these 3 violations are subject to an immediate private right of action and that the identity of the caller or their purpose for calling are irrelevant. The FCC should require anyone who uses any form of automatic telephone dialing system to transmit caller ID information to interconnecting carriers. The FCC should require that the caller ID information actually identify the calling party and that the information transmitted not be a fake telephone number like 555-555-5555, not be a discontinued telephone number, not be the telephone number of an innocent 3rd party, and not be the telephone number of a party that can claim they are not responsible for the call. The FCC should extend these requirements to non-common carriers as well otherwise all telemarketers will simply initiate their calls from non-common carriers to avoid these requirements. For instance, some companies (<http://www.611.net/NETWORKTELECOM/>) already market themselves to telemarketers as non-common carriers who are not subject to the above identification requirements.

In response to paragraph 27: Most telemarketers use Answering Machine Detection (AMD) equipment in conjunction with automated telephone dialing equipment. As the FCC notes, callers who use AMD equipment often hang up after their call has been received by the called party's answering machine, but prior to leaving a message on the called party's answering machine. The FCC should make it clear that such calls are in violation of the TCPA. I often screen incoming calls with my answering machine. This means that I let my answering machine receive the call for me, and I have to run over to it so I can listen to the message that's being left by the caller and decide if I want to talk to that particular caller at that particular time. If the caller hangs up before leaving a message, that constitutes the same problems for me as a predictive dialer hang up, and it constitutes the same TCPA violations as do predictive dialer hang ups (because a do not call request could not be given, the name of the caller was not provided, and an address or phone number was not provided). The same applies to calls that hang up when my fax machine receives a call on my behalf.

In response to paragraph 28: Oh God please yes. The FCC should modify their rules to state expressly that the identification requirements apply to otherwise lawful artificial or prerecorded messages, as well as to live solicitation calls. The FCC should also make it clear that violations of these identification rules are immediately subject to a private right of action under 47 USC Section 227(b)(3). This past November was a non-presidential election year, but in the two weeks prior to the election date I received 6 calls with prerecorded messages on behalf of Ed Rendell for governor. (I fear what will happen the next presidential election year.) The calls themselves were not in violation of the TCPA. However, not one of the calls said who the call was initiated by (unless Ed Rendell or Franco Harris is taking full responsibility for them), and not one of the calls provided a telephone number or address of the caller. If such advertisements were on TV, they

would have had to say “this advertisement was placed on behalf of the Committee to Elect Ed Rendell for Governor” and they would have had to give the address of the campaign headquarters. There is no free speech issue here. It’s in the obvious interest and need of the telephone consumer to know who is calling them on behalf of a political candidate and how they can get in touch with the caller to complain about the call (or to sign up to help with the election effort).

In response to paragraph 29: The FCC should adopt similar rules with respect to abandoned calls as the FTC. In addition, the FCC should make it clear that a resident’s answering machine and fax machine are capable of accepting calls on the resident’s behalf, and that if a resident’s answering machine or fax machine accepts a call then it is the same as if the called party picked up the phone themselves, and thus the identification requirements apply.

In response to paragraph 31: The FCC should clarify that ALL prerecorded message calls containing offers for free goods or services are prohibited without the prior express consent of the called party. The FCC should make it clear that a telephone solicitation involves one or more telephone calls whose ultimate purpose is to solicit. Dual goals cannot be a defense, or every telephone solicitation will simply add a little bit of non-solicitation news to their prerecorded message to evade the law. For instance, I have received several prerecorded calls offering free stuff, where the caller later claimed that their call to me was exempt because they only offered something free in the phone call (the actual solicitation would come later when I picked up the free offer). I’ve also gotten prerecorded calls that simply ask me if I’d be interested in a free promotion (push 1 if you’re interested in a free promotion). The caller later claimed that the call was just a survey and was thus exempt. But I was called back within a month from the same company with an offer of a free promotion. Obviously the two calls were related to one another by my telephone number. Hence the need to include in the definition of a telephone solicitation “one or more calls with the purpose of”. The next time this caller does this trick they will call back the second time using a different name, and the called party will have no way to link their first “only a survey” call with their second “actual solicitation” call. Again, requiring that the caller submit caller ID information would help identify the caller in BOTH calls and link them together.

In response to paragraph 32: The FCC should clarify that an advertisement on behalf of radio and TV stations, or on behalf of any other company, advertises the quality of goods or services and is a violation of the TCPA.

In response to paragraph 33: When the FCC should note an increase in the number of prerecorded calls placed on behalf of non-profit entities and candidates for political office. This practice is sure to increase, and the FCC should clarify that all such calls should contain the name of the party that initiated the call as well as their phone number or address. The FCC should note that providing such information is in the interest of both the caller and called parties and that it does not in any way limit free speech. The FCC should also clarify that failure to provide such information is a violation of the TCPA and subject to an immediate private right of action.

In response to paragraph 34: The FCC should clarify that there is no type of inquiry to a company that could ever constitute an “established business relationship”. Just because I look into a store window, or go into the store and try on a pair of shoes, does not mean that I have an “established business relationship” with the company. It means that I was INTERESTED in establishing a

business relationship with the company, but that I decided NOT to. Of course if I specifically tell the store's owner that I'd like him to contact me when they have a sale, that's a different story.

In response to paragraph 47: The FCC should clarify that consumers may file suit after receiving one call from a telemarketer who, for example, fails to properly identify himself or makes a call outside the time of day restrictions. The FCC should also clarify that this applies to calls of a non-commercial nature as well (for instance, calls from non-profits or calls from political candidates). With respect to the TCPA, the FCC should regulate non-common carriers the same way it regulates common carriers. Otherwise all telemarketers will simply migrate to non-common carriers to initiate their calls.

In response to paragraph 48: The FCC should clarify that its rules do not preempt more restrictive state laws, and that the FCC's rules do preempt less restrictive state laws.

If you're able to read this far, and are able to incorporate any of the above comments, then I am duly impressed and appreciate your time and effort!!!!

Stewart Abramson